



SN 09/843,614

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Brian C. Gebhardt et al.	Examiner:	Greg Bengzon
Serial No.:	09/843,614	Group Art Unit:	2144
Filed:	April 25, 2001	Docket:	2050.019US1
Title:	SYNCHRONOUS UPDATING OF DYNAMIC INTERACTIVE APPLICATIONS		

REPLY BRIEF UNDER 37 CFR § 41.41

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This Reply Brief is filed in response to the Examiner's Answer (hereinafter, "Answer"), mailed January 30, 2006. This Reply Brief is accompanied by a Request for Oral Hearing Under 37 CFR § 41.47 along with the fee set forth in § 41.20(b)(3).

STATUS OF THE CLAIMS

The present Application was filed on April 25, 2001 with claims 1-41. At this time, claims 1-41 are currently pending in the Application. Claims 1-41 stand rejected, and their rejection is under appeal.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-6,9-13, 17-30,33-36 and 40-41 were rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. (U.S. 6,502,242) in view of Filepp et al. (U.S. 6,195,661).

Claims 14-16 and 37-39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. in view of Filepp et al., and further in view of Chen et al. (U.S. 6,269,374).

Claims 7-8 and 31-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Howe et al. in view of Filepp et al., and further in view of Wistendahl (U.S. 6,496,981).

REPLY TO EXAMINER'S ANSWER

Argument

The Appellant has reviewed the Answer, and respectfully believes the statements in the original Appeal Brief remain accurate and compelling. The Answer has not introduced new grounds of rejection. However, in responding to the Answer, the Appellant would like to further explore a selected few of the points raised by the Office. The corresponding section and page numbers in the Answer will be used to reference each of these points. Each point will be addressed in the order found in the Answer. Points not discussed herein are presumed to be persuasively covered in the Applicant's prior Office Action Responses and Appeal Brief, and are in no way conceded to with respect to the Examiner's Answer or prior Office Actions.

The Examiner has indicated where the claimed invention has been described in the Applicant's specification:

The Examiner notes that the claimed invention is best described by the Applicant (in the Applicant Specifications Page 5 Lines 10-25) as dealing with handling partial changes in the contents of interactive application'. While the claims recite a first interactive application and a second interactive application, the said applications are really referring to one and the *same application, one* (the first application) being in a different state (instance) than the other (second application).

(10.2 Discussion of Rejections under 35 U.S.C. 103, page 17)

However, this is erroneous. The indicated text in the specification is in the Background section and merely describes some of the issues with the prior art. "Another problem with existing scheduling systems and broadcast servers is a lack of flexibility in handling partial changes in the contents of interactive applications. In some instances, it is desirable to make only selected changes to the content of an application, instead of replacing the entire application itself." (Applicant Specifications Page 5 Lines 10-25) There is nothing to indicate that this particular reference to a prior art problem in the Background section of the Specification in any way describes the claimed invention.

Regarding, "the said applications are really referring to one and the *same application, one* (the first application) being in a different state (instance) than the other (second application)," the

Examiner has missed the portion of the application referring to example embodiments having different interactive applications, an example cited here:

In some embodiments, the broadcast server 110 provides for transmission to the broadcast receivers a different interactive application for a given broadcast program than that which it receives encoded in the broadcast signal. The broadcast server 110 may modify, or replace the received interactive application with a different application. The different application may be a locally customized version of the originally received application, for example, providing locally relevant information (e.g. business locations for a national vendor), or providing enhanced content, such as higher bandwidth applications (e.g. in MPEG or other digital formats). (Applicant's Specification Page 59 Lines 10-17)

The Examiner has indicated, "The interactive button is generated and inserted into the broadcast signal by the STB before being presented to the subscriber" and, "As presented in the Advisory Action..., the screen image 'icon' or 'button' should be considered as an interactive application." (Answer, Page 18) Applicant respectfully disagrees. This completely mischaracterizes the Howe et al. reference (Howe et al., US Patent 6502242, hereinafter, "Howe"). Here are only a few passages from Howe to illustrate this fact:

The ICA describes a logical address that would map to an interactive server's network address, includes an application ID, and may include a "timeout" period, which is the time that the button should be displayed on the broadcast screen. (Col. 11 Lines 56-63) (emphasis added)

The ICA gives the Set Top Box (STB) an address to call to establish an interactive session associated with the Broadcast Program. (Howe, Figure 2, 405)

As will be further described below, a properly equipped subscriber STB 100 will be able to sense the ICA on that broadcast channel and then display a button or icon on the viewing screen over the broadcast channel and also store the ICA. (Col. 8 Lines 20-30) (emphasis added)

In state 712, STB 100 tests the detected ICA for the presence of information relating to the drawing of a screen button... (Col. 23 Lines 49-51) (emphasis added)

...if an ICAP is detected, the STB 100, at 430, uses any customized button information contained in the ICAP to generate and overlay a customized button in a customized location over the image.

(Col. 15, Lines 58-59) (emphasis added)

These passages clearly define an ICA (interactive callback address) as a logical address to be used if the user of the STB (set top box) interacts with the button created by the STB in response to the sensing of the ICA. In other words, the ICA itself is not an interactive application but a trigger (a “message”) sensed by the STB to signal it to generate the button. In the case of an ICAP (ICP package), attribute data (“non-standard or customized button information” Col. 15, Lines 15-20) pertaining to the button to be drawn (e.g., color, etc.) is included with the ICA and the STB uses that information to generate the button. In sum, the attribute data and the logical address data may be used by an interactive application but in of themselves are not an interactive application(s) that get loaded and executed on the reception device.

Additionally, Howe includes a flow chart in Figure 2 which illustrates the flow of the ICA to the STB and the subsequent initiation of an interactive session. At step 240, after the ICA triggers the STB, the STB stores the current broadcast channel and uses the logical address of the ICA to establish an interactive session between the STB and the appropriate interactive server. The STB then erases the button from screen and tunes to the correct channel for the interactive session. Conversely, there is nothing in claim 1 that discusses having to “tune” to another channel to execute an interactive application. Based on the operations of Howe, it is unclear how the prior art teaches the claimed subject matter.

With respect to the Examiner’s reasoning laid out on page 19 of the Answer:

While it is true that the interactive button is a 'means' of transitioning to another interactive application, this characteristic does not disqualify the interactive button from being considered an interactive application. The Examiner presents for consideration the case of a Web portal home page, wherein the user is requested to perform mouse-click to access other applications. While the portal page is only a means to another interactive application, this characteristic does not disqualify the portal page from being considered an interactive application. (10.2 Discussion of Rejections under 35 U.S.C. 103, page 19)

While the Examiner’s point is well taken with respect to a means of transition may still be an interactive application, the Applicant respectfully disagrees with respect to what is recited in the present claims. As discussed above, the ICA is merely a logical address and a trigger for the STB to take action and is not an executable interactive application. The Examiner’s answer while possibly true does not fit this case. A web portal home page is full of

executable scripts to render the page, provide animations, etc. It may be an interactive application that executes on a client system. The ICA is not, it merely provides an address location and sometimes includes button attributes that may be used by the STB to generate a button and read the logical address of the ICA to navigate to a network location.

In response to a prior assertion by the Applicant that Howe does not switch between two interactive applications, the Examiner has stated the following:

The Examiner notes that Howe's disclosure was not limited to switching from a program channel to an interactive channel, but also disclosed switching between two interactive applications. The process of switching involves displaying an interactive button with text information, a user indicating selection of said button, and finally presentation of the desired interactive application.
(10.2 Discussion of Rejections under 35 U.S.C. 103, page 19)

As discussed above and clearly illustrated, the ICA and the ICAP are not interactive applications. Howe clearly states, “The present invention provides an approach for viewer-friendly and virtually instantaneous transitioning from a first analog based television program to a second program, particularly an interactive application program, and further permits a similarly rapid and easily accomplished return to viewing the first program.” (Col. 3, lines 24-29) (emphasis added) If Howe had intended to transition between two interactive programs it would have discussed this option.

The Examiner has also interpreted the claim language as follows:

The Examiner notes that the 'records' in Claim 1 are embodied in a broadcast signal and are processed by the system and the receiving device(s) as broadcast signals. Thus the scope of Claim 1 should be interpreted to indicate replacement of a first broadcast signal containing information about a first interactive application with a second broadcast signal with information regarding a second interactive application. Howe is clearly replacing one signal with another signal.
(10.2 Discussion of Rejections under 35 U.S.C. 103, page 19) (emphasis added)

Claim 1 recites broadcasting records of the second interactive application to the reception device in place of at least some of the records of the first interactive application. It is unclear how replacing signals, which is presumed to be the, “instantaneous transitioning from a first analog based television program to a second program, particularly an interactive application program,” can be disclosing replacing records of at least some of first interactive application with records of a second interactive application. Howe does not disclose records and the Examiner

has failed to make a case for the existence of records as claimed in Howe.

Therefore, with respect to the Examiner's reasoning and at least the analysis laid out above, Howe does not, alone or with any other reference, disclose:

A computer implemented method of updating an interactive application broadcast from a broadcast system to a reception device over a transmission medium, the method comprising:

receiving at the broadcast system a broadcast signal including at least one record of a first interactive application;

selecting a second interactive application, and broadcasting records of the second interactive application to the reception device in place of at least some of the records of the first interactive application, for execution of the second interactive application by the reception device;

receiving at the broadcast system in the broadcast signal one or more additional records of the first interactive application; and

broadcasting from the broadcast system selected ones of the additional records to the reception device, for execution of the second interactive application in conjunction with the additional records.

Lastly, Howe only discloses switching from a program to an interactive application in response to a STB user's action. Claim 1 does not recite such a limitation and should be interpreted as updating the interactive application broadcast automatically, which is not disclosed by Howe. Applicant would consider amending the present claims to include such a term as "automatically" if it would place the present claims in condition for allowance.

Independent claims 18, 40, and 41 include substantially the same limitations as independent claim 1, therefore at least the arguments and reasons presented above with respect to claim 1 also apply to these claims.

Conclusion

Appellants respectfully submit that the claims are in condition for allowance and reversal of the rejection and allowance of the pending claims are respectfully requested. The Examiner is invited to telephone Appellants' attorney at 408-278-4045 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

BRIAN C. GEBHARDT ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

408-278-4045

Date

3/30/2004

By

Larry J. Johnson
Reg. No. 56,861

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 30 day of March, 2006

Name

Peter Rebuttoni

Signature

